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Supreme Court, U.S.
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No. 99-478

In The

Supreme Court of the United States

CHARLES C. APPRENDI, JR.,

Petitioner,

v.

STATE OF NEW JERSEY,

Respondent.

On Writ Of Certiorari To The Supreme Court Of New Jersey

JOINT APPENDIX

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RELEVANT DOCKET ENTRIES

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July 24, 1995	Transcript of plea entry
Sept. 5, 1995	Plenary Hearing, transcript, before Judge Ridgway
Sept. 15, 1995	Notice of Motion for an extended term of imprisonment
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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – CRIMINAL
CUMBERLAND COUNTY

STATE OF NEW JERSEY	:	Indictment No. 95-01-00046-I/A
v.	:	
CHARLES APPRENDI,	:	Term: July 1994 Session: November 1994
	:	**INDICTMENT**
	:	(Filed Jan. 19, 1995)

THE GRAND JURORS of the State of New Jersey, for the County of Cumberland, upon their oaths, present that:

COUNT ONE

(Attempted Murder – First Degree)

CHARLES APPRENDI

on or about the 24th day of September 1994, in the City of Vineland, County of Cumberland, and within the jurisdiction of this Court, purposely did attempt to kill MICHAEL FOWLKES SR., MATTIE FOWLKES, PHIL

FOWLKES, DAWN FOWLKES or MICHAEL FOWLKES JR.; contrary to the provisions of *N.J.S.A.* 2C:5-1 and 2C:11-3(a)(1), and against the peace of this State, the government and dignity of the same.

COUNT TWO

(Aggravated Assault – Second Degree)

CHARLES APPRENDI

on or about the 24th day of September 1994, in the City of Vineland, County of Cumberland, and within the jurisdiction of this Court, purposely did attempt to cause serious bodily injury to MICHAEL FOWLKES SR., MATTIE FOWLKES, PHIL FOWLKES, DAWN FOWLKES, or MICHAEL FOWLKES JR., and while committing said crime CHARLES APPRENDI was in possession of a firearm; contrary to the provisions of *N.J.S.A.* 2C:12-1b(1), and against the peace of this State, the government and dignity of the same.

COUNT THREE

(Possession of a Weapon for an Unlawful Purpose – Second Degree)

CHARLES APPRENDI

on or about the 24th day of September 1994, in the City of Vineland, County of Cumberland, and within the jurisdiction of this Court, did possess a certain weapon, that is, a firearm, with purpose to use it unlawfully against the person or property of another; contrary to the

provisions of *N.J.S.A.* 2C:39-4(a), and against the peace of this State, the government and dignity of the same.

COUNT FOUR

(Unlawful Possession of a Weapon – Third Degree)

CHARLES APPRENDI

on or about the 24th day of September 1994, in the City of Vineland, County of Cumberland, and within the jurisdiction of this Court, knowingly did possess a loaded rifle, to wit: Ruger model 10/22 carbine .22 LR cal. (serial number 238-49229); contrary to the provisions of *N.J.S.A.* 2C:39-5c(2), and against the peace of this State, the government and dignity of the same.

COUNT FIVE

(Harassment – Fourth Degree)

CHARLES APPRENDI

on or about the 24th day of September 1994, in the City of Vineland, County of Cumberland, and within the jurisdiction of this Court, with the purpose to harass another, engaged in a course of alarming conduct with the purpose to alarm or seriously annoy such other person, and in so doing, CHARLES APPRENDI acted at least in part with ill will, hatred or bias toward, and with a purpose to intimidate, an individual or group of individuals because of race, color or ethnicity; contrary to the provisions of *N.J.S.A.* 2C:33-4(d), and against the peace of this State, the government and dignity of the same.

COUNT SIX

(Attempted Murder – First Degree)

CHARLES APPRENDI

on or about the 6th day of November 1994 or the 7th day of November 1994, in the City of Vineland, County of Cumberland, and within the jurisdiction of this Court, did purposely attempt to kill MICHAEL FOWLKES SR., MATTIE FOWLKES, PHIL FOWLKES, DAWN FOWLKES or MICHAEL FOWLKES JR.; contrary to the provisions of *N.J.S.A.* 2C:5-1 and 2C:11-3a(1), and against the peace of this State, the government and dignity of the same.

COUNT SEVEN

(Aggravated Assault – Second Degree)

CHARLES APPRENDI

on or about the 6th day of November 1994 or the 7th day of November 1994, in the City of Vineland, County of Cumberland, and within the jurisdiction of this Court, purposely did attempt to cause serious bodily injury to MICHAEL FOWLKES SR., MATTIE FOWLKES, PHIL FOWLKES, DAWN FOWLKES or MICHAEL FOWLKES JR.; contrary to the provisions of *N.J.S.A.* 2C:12-1b(1), and against the peace of this State, the government and dignity of the same.

COUNT EIGHT

(Possession of a Weapon for an Unlawful Purpose – Second Degree)

CHARLES APRPENDI

on or about the 6th day of November 1994 or the 7th day of November 1994, in the City of Vineland, County of

Cumberland, and within the jurisdiction of this Court, did possess a certain weapon, that is: a firearm, with purpose to use it unla lly against the person or property of another; contrary to the provisions of *N.J.S.A.* 2C:39-4(a), and against the peace of this State, the government and dignity of the same.

COUNT NINE

(Unlawful Possession of a Weapon – Third degree)

CHARLES APPRENDI

on or about the 6th day of November 1994 or the 7th day of November 1994, in the City of Vineland, County of Cumberland, and within the jurisdiction of this Court, knowingly did possess a loaded rifle, to wit: Ruger model 10/22 carbine .22 LR cal. (serial number 238-49229); contrary to the provisions of *N.J.S.A.* 2C:39-5c(2), and against the peace of this State, the government and dignity of the same.

COUNT TEN

(Harassment – Fourth Degree)

CHARLES APPRENDI

on or about the 6th day of November 1994 or the 7th day of November 1994, in the City of Vineland, County of Cumberland, and within the jurisdiction of this Court, with the purpose to harass another, engaged in a course of alarming conduct with the purpose to alarm or seriously annoy such other person, and in so doing, CHARLES APPRENDI acted at least in part with ill will, hatred or bias toward, and with a purpose to intimidate,

an individual or group of individuals because of race, color or ethnicity; contrary to the provisions of *N.J.S.A.* 2C:33-4(d), and against the peace of this State, the government and dignity of the same.

COUNT ELEVEN

(Attempted Murder – First Degree)

CHARLES APPRENDI

on or about the 7th day of November 1994 or the 8th day of November 1994, in the City of Vineland, County of Cumberland, and within the jurisdiction of this Court, purposely did attempt to kill MICHAEL FOWLKES SR., MATTIE FOWLKES, PHIL FOWLKES, DAWN FOWLKES or MICHAEL FOWLKES JR.; contrary to the provisions of *N.J.S.A.* 2C:5-1 and 2C:11-3a(1), and against the peace of this State, the government and dignity of the same.

COUNT TWELVE

(Aggravated Assault – Second Degree)

CHARLES APPRENDI

on or about the 7th day of November 1994 or the 8th day of November 1994, in the City of Vineland, County of Cumberland, and within the jurisdiction of this Court, purposely did attempt to cause serious bodily injury to MICHAEL FOWLKES SR., MATTIE FOWLKES, PHIL FOWLKES, DAWN FOWLKES or MICHAEL FOWLKES JR.; and while committing said crime was in possession of a firearm; contrary to the provisions of *N.J.S.A.* 2C:12-1b(1), and against the peace of this State, the government and dignity of the same.

COUNT THIRTEEN

(Possession of a Weapon for an Unlawful Purpose – Second Degree)

CHARLES APPRENDI

on or about the 7th day of November 1994 or the 8th day of November 1994, in the City of Vineland, County of Cumberland, and within the jurisdiction of this Court, did possess a certain weapon, to wit: a firearm, with purpose to use it unlawfully against the person or property of another; contrary to the provisions of *N.J.S.A.* 2C:39-4a, and against the peace of the State, the government and dignity of the same.

COUNT FOURTEEN

(Unlawful Possession of a Weapon – Third Degree)

CHARLES APPRENDI

on or about the 7th day of November 1994 or the 8th day of November 1994, in the City of Vineland, County of Cumberland, and within the jurisdiction of this Court, knowingly did possess a loaded rifle, to wit: Ruger, model 10/22 carbine .22 LR cal. (serial number 238-49229); contrary to the provisions of *N.J.S.A.* 2C:39-5c(2), and against the peace of this State, the government and dignity of the same.

COUNT FIFTEEN

(Harassment – Fourth Degree)

CHARLES APPRENDI

on or about the 7th day of November 1994 or the 8th day of November 1994, in the City of Vineland, County of

Cumberland, and within the jurisdiction of this Court, with the purpose to harass another, engaged in a course of alarming conduct with the purpose to alarm or seriously annoy such other person, and in so doing, CHARLES APPRENDI acted at least in part with ill will, hatred or bias toward, and with a purpose to intimidate, an individual or group of individuals because of race, color or ethnicity; contrary to the provisions of *N.J.S.A.* 2C:33-4(d), and against the peace of this State, the government and dignity of the same.

COUNT SIXTEEN

(Attempted Murder – First Degree)

CHARLES APPRENDI

on or about the 22nd day of December 1994, in the City of Vineland, County of Cumberland, and within the jurisdiction of this Court, purposely did attempt to kill MICHAEL FOWLKES SR., MATTIE FOWLKES, PHIL FOWLKES, DAWN FOWLKES or MICHAEL FOWLKES JR.; contrary to the provisions of *N.J.S.A.* 2C:5-1 and 2C:11-3a(1), and against the peace of this State, the government and dignity of the same.

COUNT SEVENTEEN

(Aggravated Assault – Second Degree)

CHARLES APPRENDI

on or about the 22nd day of December 1994, in the City of Vineland, County of Cumberland, and within the jurisdiction of this Court, purposely did attempt to cause

serious bodily injury to MICHAEL FOWLKES SR., MATTIE FOWLKES, PHIL FOWLKES, DAWN FOWLKES or MICHAEL FOWLKES JR.; and while committing said crime CHARLES APPRENDI was in possession of a firearm; contrary to the provisions of *N.J.S.A.* 2C:12-1b(1), and against the peace of this State, the Government and dignity of the same.

COUNT EIGHTEEN

(Possession of a Weapon for an Unlawful Purpose – Second Degree)

CHARLES APPRENDI

on or about the 22nd day of December 1994, in the City of Vineland, County of Cumberland, and within the jurisdiction of this Court, did possess a certain weapon, that is, a firearm, with purpose to use it unlawfully against the person or property of another; contrary to the provisions of *N.J.S.A.* 2C:39-4(a), and against the peace of this State, the government and dignity of the same.

COUNT NINETEEN

(Unlawful Possession of a Weapon – Third Degree)

CHARLES APPRENDI

on or about the 22nd day of December 1994, in the City of Vineland, County of Cumberland, and within the jurisdiction of this Court, knowingly did possess a loaded rifle, to wit: Ruger model 10/22 carbine .22 LP cal. (serial number 238-49229); contrary to the provisions of *N.J.S.A.* 2C:39-5c(2), and against the peace of this State, the government and dignity of the same.

COUNT TWENTY

(Harassment – Fourth Degree)

CHARLES APPRENDI

on or about the 22nd day of December 1994, in the City of Vineland, County of Cumberland, and within the jurisdiction of this Court, with the purpose to harass another, engaged in a course of alarming conduct with the purpose to alarm or seriously annoy such other person, and in so doing CHARLES APPRENDI acted at least in part with ill will, hatred or bias toward, and with a purpose to intimidate, an individual or group of individuals because of race, color or ethnicity; contrary to the provisions of *N.J.S.A.* 2C:33-4(d), and against the peace of this State, the government and dignity of the same.

COUNT TWENTY ONE

(Unlawful Possession of a Prohibited Weapon – Third Degree)

CHARLES APPRENDI

on or about the 22nd day of December 1994, in the City of Vineland, County of Cumberland, and within the jurisdiction of this Court, knowingly did have in his possession a prohibited weapon, that is, a destructive device which was an incendiary device; contrary to the provisions of *N.J.S.A.* 2C:39-3a, and against the peace of this State, the government and dignity of the same.

COUNT TWENTY TWO

(Unlawful Possession of a Prohibited Weapon – Third Degree)

CHARLES APPRENDI

on or about the 22nd day of December 1994, in the City of Vineland, County of Cumberland, and within the jurisdiction of this Court, knowingly did have in his possession a prohibited weapon, that is, a destructive device which was an anti-personnel bomb; contrary to the provisions of *N.J.S.A.* 2C:39-3a, and against the peace of this State, the government and dignity of the same.

COUNT TWENTY THREE

(Unlawful Possession of a Prohibited Weapon – Fourth Degree)

CHARLES APPRENDI

on or about the 22nd day of December 1994, in the City of Vineland, County of Cumberland, and within the jurisdiction of this Court, knowingly did have in his possession a prohibited weapon, that is, a firearm silencer; contrary to he [sic] provisions of *N.J.S.A.* 2C:39-3(c), and against the peace of this State, the government and dignity of the same.

MICHAEL BROOKE FISHER
CUMBERLAND COUNTY
PROSECUTOR

By: /s/ Robert J. Luther
Assistant County Prosecutor

Endorsed:

/s/ William J. [illegible]
Foreperson

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CUMBERLAND COUNTY
INDICTMENT NO. 95-01-46-I/A

STATE OF NEW JERSEY,	)	TRANSCRIPT
Plaintiff,	)	OF
vs.	)	PLEA ENTRY HEARING
CHARLES APPRENDI,	)	
Defendant.	)	

Place: Cumberland County
Courthouse
Broad and Fayette Streets
Bridgeton, New Jersey

Date: July 24th, 1995

BEFORE:

THE HONORABLE RUSHTON H. RIDGWAY, J.S.C.

TRANSCRIPT ORDERED BY:

THE HONORABLE RUSHTON H. RIDGWAY, J.S.C.

APPEARANCES:

ROBERT J. LUTHER, FIRST ASSISTANT PROSECUTOR
Attorney on behalf of the State of New Jersey

JOSEPH D. O'NEILL, ESQ.,
Attorney on behalf of the Defendant

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[p. 3] (Whereupon on the record)

THE COURT: All right, Mr. O'Neill.

MR. O'NEILL: Good afternoon, Your Honor; Joe O'Neill, appearing for defendant, Charles Apprendi, for the purpose of an entry of a plea.

MR. LUTHER: Robert Luther, First Assistant Prosecutor, on behalf of the State.

THE COURT: All right. You have the paperwork there?

MR. O'NEILL: Yes, I do, Judge.

THE COURT: All right; Mr. Apprendi, do you want to stand up, please; raise your right hand.

CHARLES APPRENDI, DEFENDANT, SWORN

DIRECT EXAMINATION BY THE COURT:

Q. Now, I understand you're entering a plea in this case, a plea of guilty, to something?

A. Yes.

Q. All right.

THE COURT: What is he entering a plea to, Mr. O'Neill?

MR. O'NEILL: Just the one – or two, Lou. The judge gets one.

THE CLERK: No, he gets the whole thing.

THE COURT: I get the whole packet.

MR. O'NEILL: Yeah; but this is not a package. This is the plea agreement.

[p. 4] THE COURT: I get that; I get that.

MR. O'NEILL: You want it? Okay. I will do it from the plea agreement; all right.

THE COURT: All right. Apparently, you're entering pleas of guilty of possession of a weapon for an unlawful purpose?

MR. O'NEILL: Two counts, Judge.

THE COURT: Two counts of that?

MR. O'NEILL: Yes, sir.

THE COURT: And possession of a prohibited weapon?

MR. O'NEILL: A bomb; yes, sir.

THE COURT: Is that correct?

THE WITNESS: Yes.

DIRECT EXAMINATION BY THE COURT:

Q. You pleading guilty because you are guilty?

A. Yes.

Q. Okay. And, apparently, on the possession – each of the possession of the weapon charges, as I read this, the length –

Well, why don't you put it on the record, because I will understand it perhaps better 'cause you have reviewed this with him.

MR. O'NEILL: I will, Judge.

THE COURT: Okay.

MR. O'NEILL: Let me ask the defendant some questions, [p. 5] Judge, if I may.

DIRECT EXAMINATION BY MR. O'NEILL:

Q. Charles, we have talked over a period of time about a plea bargain agreement; haven't we?

A. Yes.

Q. And I've gone over the indictment with you and all the 23 charges against you that are contained in that indictment?

A. Yes.

Q. All right. You understand that the agreement that has been made by the First Assistant Prosecutor, Mr.

Luther, and me and you is not binding on the judge; he does not have to accept that. Do you understand it?

A. Yes.

Q. He may find it is inappropriate for many different reasons and decide that you have to stand trial; do you understand that?

A. Yes.

Q. All right. Now, you understand that out of the 23 separate counts in the indictment, that the Prosecutor is recommending that 20 of those counts be dismissed in exchange for your admitting your guilt and pleading guilty to the three charges just enunciated by His Honor; do you understand that?

A. Yes.

Q. All right. Now, do you remember my giving you a letter of May 11, 1995 in which I went over all the charges [p. 6] against you, the evidence against you, what maximum terms and fines you would be exposed to; do you understand that?

A. Yes.

Q. Okay. You remember I said that if you were convicted of everything with which you are charged, you would face a jail term of a maximum of 150 years and fines totaling $882,000; do you remember that from my letter?

A. Yes.

Q. Okay. But, by virtue of the plea bargain agreement, if His Honor accepts it, you will not be sentenced

to nearly such long terms, nor fines, as I just indicated; do you understand that?

A. Yes.

Q. As you stand before His Honor, Judge Ridgway, today, are you under the influence of any alcohol or drugs?

A. No.

Q. Are you appearing before His Honor voluntarily?

A. Yes.

Q. Have I gone over with you the plea bargain agreement in detail and have I asked you to sign it?

A. Yes.

Q. And you have signed it?

A. Yes.

Q. You understand the contents of that agreement?

A. Yes.

[p. 7] Q. You understand and you agree that nobody is trying to coerce you or force you to do this, you understand and agree?

A. Yes.

Q. You understand that you have certain rights that you are giving up by virtue of this plea bargain agreement.

For example, you have a right to a trial by jury; do you understand that?

A. Yes.

Q. You have the right to call witnesses on your own behalf; do you understand that?

A. Yes.

Q. Do you understand also that you have the right through me or some other lawyer, if you wished, to cross-examine witnesses that would testify on behalf of the State?

A. Yes.

Q. You understand that before being found guilty, the jury would have to decide the guilt against you by a test of beyond a reasonable doubt. You understand you're giving up all of these rights by virtue of this plea bargain agreement; do you understand?

A. Yes.

Q. All right. Now, do you understand that under Counts 3 and 18, the length of the sentence is up to the court, including whether these counts run consecutively or concurrently; do you understand that?

[p. 8] A. Yes.

Q. You know that, don't you, and correct me if you don't understand anything, that consecutive means that the sentences could be tacked on one after the other, rather than concurrently which means that they run together; –

A. Yes.

Q. – do you understand that?

A. Yes.

Q. Okay.

THE COURT: Now, before you go any further, do you understand that the – apparently, the 3rd and the 18th counts are crimes of the second degree?

THE WITNESS: Yes.

THE COURT: And that the sentence range is between five and ten years on each one?

THE WITNESS: Yes.

THE COURT: That's the normal sentence.

And that if you were to receive the maximum on each sentence – the normal sentence and they were to run consecutively on those two counts, you could get 20 years?

THE WITNESS: Yes.

THE COURT: And is he eligible for an extended term, Prosecutor?

MR. LUTHER: Your Honor, not only could he get five or ten years on each second degree, there could be up to five [p. 9] years without parole on each second-degree count.

THE COURT: On the Graves Act?

MR. LUTHER: Yes; they're both Graves Act offenses.

THE COURT: Okay.

Do you understand that?

THE WITNESS: Yes.

THE COURT: On each count?

MR. LUTHER: Also, Your Honor, –

THE COURT: Is that, Prosecutor, on each count?

MR. LUTHER: Yes.

THE COURT: Which would mean a total of a maximum of 20 years, that he would have to do ten before being eligible for parole; is that what you're saying?

MR. LUTHER: That is correct.

THE COURT: You understand that, Mr. Apprendi?

THE WITNESS: Yes.

MR. O'NEILL: That's included in my letter of May 11th, isn't it, Mr. Apprendi, of this year?

THE WITNESS: Yes.

MR. LUTHER: Your Honor, one other aspect of the plea agreement is that the State will be moving for an extended term on Count 18 of the indictment alleging racial bias as the grounds. Therefore, if the extended term is granted by the court, Mr. Apprendi could be sentenced on Count 18 to up to 20 years in prison, must serve ten.

[p. 10] THE COURT: Mr. Apprendi, did you hear the –

THE WITNESS: Yeah, I understand.

THE COURT: – Prosecutor?

THE WITNESS: Yeah.

THE COURT: Did you understand it?

THE WITNESS: Yes.

MR. O'NEILL: Judge, I have also discussed at length the motion that we have filed before Your Honor on that issue.

THE COURT: Just wait a minute.

Those – now, we've talked about two of the sentences – two of the counts, I mean.

MR. LUTHER: That's correct.

THE COURT: What about the third count which is Count Number 22?

MR. LUTHER: Your Honor, Count 22, the length of the sentence would be up to the court; but the plea agreement specifies that count shall run concurrently with Counts 3 and 18. So I think it's important that the court inquire of Mr. Apprendi that he understands the maximum, potential sentence which could be announced by the court would be 30 years, must serve 15.

THE COURT: Do you understand that?

MR. O'NEILL: Well, you know, let me check something here, Judge, if I may.

(Whereupon brief pause on record; Mr. Luther and Mr. [p. 11] O'Neill conferring off the record)

MR. O'NEILL: Judge, we're talking about the racially-motivated aspect –

THE COURT: I understand that and that is subject to your attack at a later date.

True?

MR. O'NEILL: That is the subject of the motion that's been filed.

THE COURT: Well, what he's talking about is, if the motion is denied and I sentence him to the maximum utilizing that statute, that he could be sentenced up to 30 years with a maximum – with a 15-year period of parole ineligibility.

MR. O'NEILL: Yes.

THE COURT: True?

MR. O'NEILL: Yes.

THE COURT: And if that – if your motion to attack that statute is granted, what's the maximum he faces?

MR. O'NEILL: Twenty, must serve ten.

THE COURT: Do you understand that?

THE WITNESS: Yes.

MR. O'NEiLL: I think the Prosecutor agrees.

Tell me, Mr. Luther, if you disagree.

MR. LUTHER: I agree with that, Judge.

THE COURT: I understand it; but I want to make sure that the defendant understands it.

[p. 12] Do you understand that, sir?

THE WITNESS: Yes.

THE COURT: Okay. Go ahead, Mr. O'Neill.

MR. O'NEILL: Judge, there is a recommendation for no imposition of fines in this case.

DIRECT EXAMINATION BY MR. O'NEILL:

Q. Even though the maximum fine could be as I indicated earlier, except for the statutorily mandatated (sic) – mandated fine of $100 for the VCCB, which is the Violent Crime Compensation Board that I explained to you earlier, Mr. Apprendi, and the additional $75, that's on each count, $75 for the Safe Streets Act. That's a written law called a statute and the judge has to do that. Do you understand that?

A. Yes.

Q. Now, I want you to understand also, as I talked to you about previously, that the Prosecutor is going to reserve his right to argue for the stiffest at the time the court would impose a sentence. He is going to request the extended sentence term that His Honor has just gone over with all of us here today and the Prosecutor is also going to request a minimum term of prison without the right to parole; do you understand that?

A. Yes.

Q. Okay. You understand that these crimes, the three to which you are pleading guilty of the 23 charges, involve the [p. 13] unlawful use of a gun to scare somebody on two occasions, they being November and December of last year, 1994; do you understand that?

A. Yes.

Q. And also the bomb which you were found in possession of at your home immediately consequent to the shooting incident of December of 1994?

A. Yes.

Q. All right. Do you have any questions about this so far? I know it's a lot for you to understand, but you are a pharma (sic) – a pharmacist, you're an educated man; do you have any questions so far?

A. No.

Q. And –

THE COURT: Let me ask you this, Mr. Apprendi: You've had an opportunity this morning to sit down with Mr. O'Neill. I am making the assumption that you've discussed basically this arrangement that is being described that you've discussed this prior to today.

THE WITNESS: Yes.

THE COURT: And had an opportunity to think about it?

THE WITNESS: Yes.

THE COURT: To reflect on it?

THE WITNESS: Yes.

THE COURT: Do you think that under the circumstances, [p. 14] knowing what the proof is and after discussing the legalities of it with Mr. O'Neill, that this plea is in your best interest?

THE WITNESS: Yes.

THE COURT: You understand, of course, with Counts – that if – the court's not bound by this recommendation. I can reject it.

THE WITNESS: Yes.

THE COURT: And if I reject it, you can go back to your not guilty plea and try your case in front of a jury; and, if you do on these counts, if you do that, Number One, anything you are going to tell me today can't be used against you. Do you understand that?

THE WITNESS: Yes.

THE COURT: Do you further understand that we've described for you – at least your lawyer and Mr. Luther of the Prosecutor's Office have described for you what the maximum sentence you could receive if you went to trial in front of a jury and were convicted on those three counts; do you understand that? You understand that?

THE WITNESS: Yes. Yes, I do.

THE COURT: You understand that the 3rd and the 18th counts are crimes of the second degree that carry with them, forgetting about the Graves Act, forgetting about the bias portion of it, forgetting about the references to those two [p. 15] aspects of the case; but second-degree crimes carry with them a presumption, Number One, that you're going to prison and the presumptive sentence is seven years on each of those two counts.

Do you understand that?

THE WITNESS: Yes.

THE COURT: Even if I were to, which I apparently have the ability to do, is to treat these as third-degree counts for purposes of sentencing, even if I were to do that, the presumption is that you will still incur a jail sentence.

THE WITNESS: Yes.

THE COURT: You understand that?

THE WITNESS: Yes.

THE COURT: All right. Go ahead, Mr. O'Neill.

MR. O'NEILL: That's all I have, unless Your Honor or the Prosecutor wishes to examine him.

THE COURT: Do you – this plea form here which describes what we've just discussed and also reiterates or is a written record of what we've put on, verbally, on the record about your understanding of the charges and you're pleading guilty because you are guilty and the fact that you understand you're giving up a jury trial and among other things; in any event, did you go over these forms with Mr. O'Neill before you signed them?

THE WITNESS: Yes, I did.

[p. 16] THE COURT: Did you understand them?

THE WITNESS: Yes.

THE COURT: You read and write English?

THE WITNESS: Yes.

THE COURT: All right. And are the answers true?

THE WITNESS: Yes.

THE COURT: Okay. Mr. Luther, anything else you want to develop on the record?

MR. LUTHER: No, Your Honor.

THE COURT: Now, –

MR. O'NEILL: Your Honor, could I ask –

THE COURT: Now, just one other thing, just so it's clear in my mind and that the defendant understands. "The defendant," and I am reading from the plea agreement: "The defendant understands that any appeal shall operate to void the entire plea agreement."

MR. LUTHER: Judge, the next sentence on there indicates that he may appeal the sentence, however, without voiding the entire plea agreement.

THE COURT: Well, it doesn't say that. It just says, "The defendant may appeal this sentence." The understanding is that if he appeals it, it doesn't void the entire plea agreement; is that what you're saying –

MR. LUTHER: Yes.

THE COURT: – telling me?

[p. 17] MR. O'NEILL: That is our understanding, Judge.

THE COURT: No matter what the basis of the appeal is?

MR. LUTHER: Well, that's assuming that the appeal is limited to the issue of sentence, the State will not move to retract the plea agreement.

THE COURT: I mean, even if the issue that is raised on appeal does not relate to the bias crime aspect of it – 'cause I understand that's really the legal issue that's sort of up in the air.

MR. O'NEILL: It is, Judge.

THE COURT: All right. I mean, if there's some other aspect of the sentence that bothers him and he takes an appeal, it's not going to vitiate the sentence?

MR. LUTHER: That is correct, Judge.

THE COURT: All right. As long as everybody understands what we're doing here.

MR. O'NEILL: Judge, may I ask one more question of Mr. Apprendi?

THE COURT: Sure.

DIRECT EXAMINATION BY MR. O'NEILL:

Q. Are you satisfied with the services rendered by me and my law firm thus far in this matter?

A. Yes.

Q. Thank you.

THE COURT: Okay. Now, do you have a motion pending?

[p. 18] MR. O'NEILL: I do, Judge.

THE COURT: That looks forward to what, if it's granted?

MR. O'NEILL: Well, that would vitiate the statutory provision which would allow for an enhanced sentencing due to a racially-motivated or biased crime. We

believe that the burden of proof is improper in view of the historical treatment of the criminal law and it's so enunciated in our brief, Judge.

THE COURT: Okay. That has to be disposed of before sentencing, I would assume.

MR. O'NEILL: Yes, Judge; the same day, if Your Honor pleases.

THE COURT: Yeah; I understand; but, in point of time, whether it be days or moments, it should precede the sentencing?

MR. O'NEILL: Yes.

THE COURT: Okay.

What's the sentence date?

THE CLERK: September 8th.

THE COURT: Okay. Now, you want – are you going to argue orally this motion or are you going to submit on the papers?

MR. O'NEILL: I would like to, not only argue it orally and rely on that, plus the presentation of a brief which is unfiled; but, also, present the testimony of Dr. Gerald [p. 19] Cooke, who is a forensic psychologist, who has examined the defendant.

THE COURT: Okay. When is – when is the sentence date; did you say?

THE CLERK: September 8th.

MR. LUTHER: Judge, could I request September 15.

THE COURT: Yeah; if we do it September 15th, can we have the – can we have the motion returnable and heard on September the 1st?

MR. LUTHER: That's fine by me, Judge.

MR. O'NEILL: Surely, Judge.

THE COURT: That's two weeks before the sentence date.

MR. O'NEILL: The only thing is this: You know, I've tried to make this as cost-effective for Mr. Apprendi's family that I can, Judge. That's why I wanted everything on a one day – if it's not inconvenient for Your Honor.

THE COURT: No, I can't do it all in one day, because if your arguments have any merit to them, and I assume that they will have some merit to them, I've got to give it some consideration and I am not going to just go into the back room, in my chambers, and take ten minutes to think about it and then come back out here and make a decision. I want some time to – and maybe do some further research.

MR. O'NEILL: At the court's pleasure, yes, sir; we will appear both times, of course.

[p. 20] THE COURT: September 1st.

Mr. Luther, can you have your brief in a week ahead of time?

MR. LUTHER: Yes, Judge.

THE COURT: Okay. Which takes us back to August the 25th; September 1st will be the return date and I will hear oral argument and then – whatever oral

testimony there is on September the 1st and I will sentence him on September the 15th.

MR. LUTHER: Judge, what day is September 1st?

THE COURT: Friday.

MR. LUTHER: What is the last week in August? I am on vacation the last week in August.

THE COURT: Well, then you can't do it September (sic) 25th. You can't have your brief – maybe you can. Can you have your brief in by then?

MR. LUTHER: Okay; September 1 is a Friday; that would be the last Friday –

THE COURT: Of that week, so you can't – you won't be here that week; is that what you're telling me?

All right. Then we will listen to it September the 8th.

MR. O'NEILL: Motion September 8th.

THE COURT: Right; I will hear the –

MR. LUTHER: Judge, September 8th – not to [p. 21] inconvenience the court, but September 8th is the beginning of the Prosecutor's Convention that weekend. I could give you September 7th; it's a Thursday, might actually work out better.

THE COURT: He's getting better as he gets older.

MR. LUTHER: (chuckling).

THE COURT: September the 8th is a Friday, and he tells me the 7th is a Thursday; you're very astute.

What would you like –

I will reserve September the 7th at 1:30.

MR. LUTHER: Fine.

THE COURT: For oral argument and I will hear any testimony, including this doctor that the defense wants to present.

And September the 15th which is the following Friday, a week from the day of the – a week from the 8th, I will impose sentence.

MR. LUTHER: Okay.

THE COURT: And you're going to have your brief in by?

MR. LUTHER: Is Mr. O'Neill's brief done at this point?

THE COURT: September the 1st?

MR. LUTHER: I will have it in before I leave on vacation.

THE COURT: Fine.

MR. LUTHER: We still have to take a factual basis [p. 22] from the defendant.

MR. O'NEILL: All right.

DIRECT EXAMINATION BY MR. O'NEILL:

Q. Mr. Apprendi, let me invite your attention back to November and to December of 1994 and ask if on both of those occasions you had possession of a gun for an unlawful purpose, namely, to frighten some people in a

house, people named Foulkes, although you didn't know who they were at the time.

Is that true?

You discharged a weapon, didn't you, on both those occasions, November –

A. Yes.

Q. – and December? Okay.

And on the occasion of the second discharge of a weapon, you were apprehended by the police at that time and there was in your possession on your premises a bomb; is that also true?

A. Yes.

Q. Okay.

MR. O'NEILL: No further questions, Judge.

THE COURT: The plea must be related to what he did at this –

What's the fellow's name? Foulkes?

MR. O'NEILL: Foulkes; well, he didn't – Judge, I don't think that, most respectfully, has anything to do with [p. 23] it.

Correct me if I am wrong, 'cause I am going to do it the right way in accordance with Your Honor's wishes, but I think that he has already said before the court a factual basis for the plea; namely, that he had possession of a weapon on two occasions for an unlawful purpose, as stated. He also had possession of a bomb on the second of those dates when the unlawful possession of the gun occurred.

MR. LUTHER: Judge, if I could just ask him a couple of other questions.

If I could just confer with Mr. O'Neill, briefly.

(Whereupon brief, inaudible pause on record; attorneys conferring off the record)

MR. O'NEILL: If Your Honor pleases, there were four incidents originally alleged in the indictment; okay? The defense, as part of the plea bargain, has agreed to plead guilty to two of those. There was an offense alleged in September, namely, September 24 of 1994, as well as one, as previously mentioned, in November of 1994. So what we would like to do at this time so we don't have to do the paperwork all over again, we're not changing anything. We're leaving the pleas to the same charges, but will change the date from November to September of 1994.

Is that in accord with your understanding, Mr. Luther?

MR. LUTHER: Yeah; Count 3, to which the defendant is [p. 24] pleading guilty, is alleging September 24th, 1994.

MR. O'NEILL: Though the dates aren't important to the prosecution or to the defense, but the plea of guilty to those charges is important to both sides.

THE COURT: Well, he's certainly – we have to establish the date that it took place and where it took place and –

What's the date?

MR. O'NEILL: Well, the date that we will plead to is September 22 of 1994, Judge.

MR. LUTHER: Excuse me, September 24.

THE COURT: You understand that, Mr. Apprendi?

MR. O'NEILL: September 24 of 1994.

THE COURT: September 24th, that's the date you're admitting this – these acts occurred?

MR. O'NEILL: He's admitting to it, Judge, and I am going to ask him on the record; but he doesn't know the exact date, I can tell you that. September 24 of 1994.

THE COURT: Is it close – is that a close date?

THE WITNESS: Yes.

THE COURT: Okay.

Now, let me ask –

What is it, Prosecutor?

MR. LUTHER: If I could just ask a couple more questions to the factual basis?

[p. 25] THE COURT: Go ahead.

CROSS-EXAMINATION BY MR. LUTHER:

Q. Mr. Apprendi, on September 24, 1994 did you fire a rifle shot into the residence of 5211 East Chestnut Avenue in the City of Vineland?

A. Yes.

Q. Okay. And you didn't hit anyone with that bullet; correct?

A. Yes.

Q. Okay. And did you fire a shot into the second floor bedroom window at that time?

A. What was the question again?

Q. Okay. Did you fire a single shot from a rifle into the second floor – into a second-floor window at that residence on September 24, 1994?

A. I'm not sure about the window, but everything else is correct.

Q. Okay. Well, at least you admit firing a rifle shot at the home on that date; is that correct?

A. Yes.

Q. Okay. And the location of this residence was about a half a mile, three-quarters of a mile from your residence; is that correct?

A. Yes.

Q. All right. And on December 22 of 1994, did you fire [p. 26] several rifle shots into the residence located at 5211 East Chestnut Avenue in the City of Vineland?

A. Yes.

Q. And your purpose on both occasions was to scare the people in the home; is that correct?

A. Well, (long pause) –

MR. LUTHER: Your Honor, Mr. O'Neill informs me that Mr. Apprendi has already answered that question. That that question was already asked of him.

THE COURT: Well, it has to be the use of a weapon for an unlawful purpose; you've got to have the purpose on the record.

MR. LUTHER: I agree, Judge.

MR. O'NEILL: I asked him that question; he answered in the affirmative, Judge.

THE COURT: Well, why can't he again restate it? Is that – was that question put to him? Did he do it to scare the people or a person inside? Are you telling me that that was put on the record? Is that what you're telling me?

MR. O'NEILL: I asked him that question and he answered in the affirmative. We're not trying to hold anything back here, Judge. As in any adversarial proceeding, a question that's been asked previously and answered previously is objectionable.

THE COURT: I don't remember it being asked. Now, [p. 27] what do you want me to do? Get a copy of the transcript and if I don't and if it wasn't asked, then we haven't put an appropriate factual basis on the record.

Now, I understand, and it's quite clear to me, that he – and any other number of defendants are reticent when it comes to admitting their guilt. However, the law is the law. We've got to have a factual basis on the record.

MR. O'NEILL: Can I have half a minute, Judge?

THE COURT: Can you what?

MR. O'NEILL: Have a half a minute to talk to him?

THE COURT: Take a half an hour or more; take a half a minute; I don't care. Take as much time as you want.

MR. O'NEILL: I don't need that much time, Judge.

(Whereupon Mr. O'Neill and his client, Mr. Apprendi, conferring off the record; brief pause)

THE COURT: Let me remind you, too, there is going to be a Pre-Sentence Investigation and they're going to ask him for a – for his factual basis. And I will tell you right now, if there's any dancing around where he denies it; you know, you get this too many times. You know, the official version is such and such and then the next part down on the page, we all know is, defendant's version and, oh, he denies it. He just took a plea to get it off his back, because his lawyer –

MR. O'NEILL: That's not going to happen here, Judge.

THE COURT: I am telling you now. I will just vitiate [p. 28] the plea and we will start all over again.

MR. O'NEILL: I know you will and you will be right, of course.

THE COURT: Okay. Now, –

MR. O'NEILL: I understand that.

Can I confer with my client?

THE COURT: Go ahead.

(Whereupon Mr. O'Neill and his client, Mr. Apprendi, conferring off the record; five-minute pause)

MR. O'NEILL: I appreciate the court's indulgence, really, Judge. I know you have better things to do.

I think we're ready.

May I address the witness with a question, Judge?

THE COURT: Sure.

MR. O'NEILL: Do you mind, Mr. Prosecutor?

MR. LUTHER: No.

MR. O'NEILL: All right.

REDIRECT EXAMINATION BY MR. O'NEILL:

Q. Now, Mr. Apprendi, when you discharged that weapon on each of those occasions, would it be fair to say that you did so not knowing whether anybody was in the property, but recognizing that upon either hearing the sound of the discharge of the weapons or upon seeing the damage caused by the bullet, that would have possibly scared somebody; can you accept that?

A. Yes.

[p. 29] MR. O'NEILL: No further questions.

THE COURT: Mr. Prosecutor.

MR. LUTHER: I will leave it in the court's discretion.

THE COURT: All right. As long as the defendant acknowledges that that is the unlawful purpose.

REDIRECT EXAMINATION BY MR. O'NEILL:

Q. Do you so acknowledge, Mr. Apprendi, –

Do you acknowledge that what you did was for an unlawful purpose?

A. Yes.

THE COURT: All right. You know, whether it's to scare someone means to me that it puts someone in fear or to harass them and unless there's a contradiction to that from you or the defendant at this point, I will assume that's why it was done and I will accept the plea.

Anything else?

MR. O'NEILL: Not from the defense, Judge.

THE COURT: Anything else, Prosecutor?

MR. LUTHER: No, Your Honor.

THE COURT: All right.

Now, we've got the schedule set; right?

MR. O'NEILL: Yes, sir.

THE COURT: Okay. See you on those dates.

MR. LUTHER: I'm sorry, Judge, –

[p. 30] SHERIFF: All rise.

MR. LUTHER: – one – one further matter. Pursuant to the plea agreement, the Court Rule requires that a Notice of Motion for an extended term be served at the time of the plea. So let the record reflect that I am currently serving a copy of the Notice of Motion on Mr. Apprendi and Mr. O'Neill.

MR. O'NEILL: I accept it, Judge.

MR. LUTHER: Okay.

THE COURT: Okay. Thank you, gentlemen. We will recess until 1:30.

(Whereupon the hearing concluded at this time)

CERTIFICATION

I, CAROL H. VENDZULES, the assigned transcriber, do hereby certify that the foregoing transcript of proceedings in the Superior Court on 7/24/95, Tape No. 16890(1), Index No. from 1435 to 3820, is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate record of the proceedings according to the best of my ability and knowledge.

Signature /s/ Carol H. Vendzules
CAROL H. VENDZULES
CERTIFIED DIRECTOR/
TRANSCRIBER OF THE
STATE OF NEW JERSEY,
AOC #268
THE TYPE-RIGHT-ER

DATED: 9-19-95

MICHAEL BROOKE FISHER
CUMBERLAND COUNTY PROSECUTOR
43 Fayette Street
Bridgeton, New Jersey 08302
(609) 453-0486

STATE OF NEW JERSEY Plaintiff, v. CHARLES APPRENDI, Defendant.	: SUPERIOR COURT OF : NEW JERSEY COUNT OF : CUMBERLAND LAW : DIVISION - CRIMINAL : PART : : Indictment No. : 95-01-00046-I/A : : **NOTICE OF MOTION**

TO: Charles Apprendi
Cumberland County Jail
54 Broad Street
Bridgeton, New Jersey 08302

Joseph D. O'Neill, Esquire
30 West Chestnut Avenue
Vineland, New Jersey 08360

PLEASE TAKE NOTICE, that on September 15, 1995, at 9:00 o'clock in the forenoon or as soon thereafter as counsel may be heard, the undersigned Assistant Prosecutor will move for the imposition of an extended term of imprisonment for the above-captioned defendant on count 18 of the indictment, pursuant to *N.J.S.* 2C:44-3, 2C:43-7 and 2C:44-6(e).

The State will rely upon *N.J.S.* 2C:44-3(e) and testimony to be adduced at the sentencing hearing.

/s/ Robert J. Luther
Robert J. Luther
First Assistant Prosecutor

NEW JERSEY SUPERIOR COURT PAGE 01 OF 02
CUMBERLAND COUNTY LAW DIVISION - CRIMINAL

STATE OF NEW JERSEY 95000019-001 A

v.

CHARLES APPRENDI

DATE OF BIRTH 03/04/1955

DATE OF ARREST 12/22/1994

DATE OF THE ORIGINAL PLEA 03/13/1995

S.B.I.# 8873358

DATE IND/ACCUSATION FILED 01/19/1995

ORIGINAL PLEA WAS

XX NOT GUILTY __ GUILTY

XX JUDGMENT OF CONVICTION

CHANGE OF JUDGMENT

XX ORDER FOR COMMITMENT

INDICTMENT/ACCUSATION DISMISSED

JUDGMENT OF ACQUITTAL

ADJUDICATION BY
XX GUILTY PLEA DATE 07/24/1995

_____ JURY TRIAL DATE _____

_____ NON-JURY TRIAL DATE _____

_____ DISM/ACQUITTED DATE _____

ORIGINAL CHARGES ON IND 95-01-00046-I

COUNT(S)	DESCRIPTION	STATUTE
01, 006	CRIMINAL ATTEMPT ATTEMPT MURDER - PURPOSELY	1 2C:5-1
02, 007	AGG ASSLT SBI	2 2C:12-1B(1)
03, 008	UNLAW PURPOSE-FIREARMS	2 2C:39-4A

04, 014	UNLAW POSS WEAP-LOADED	3 2C:39-5C(2)
05, 010	ETHNIC INTIMIDATION (HARRASSMENT)	4 2C:33-4D
09,	UNLAW POSS WEAP-RIFLES/SHOTGUN	3 2C:39-5C
011, 016	CRIMINAL ATTEMPT ATTEMPT MURDER - PURPOSELY	1 2C:5-1
012, 017	AGG ASSLT SBI	2 2C:12-1B(1)
013, 018	UNLAW PURPOSE-FIREARMS	2 2C:39-4A
015, 020	ETHNIC INTIMIDATION (HARASSMENT)	4 2C:33-4D

FINAL CHARGES

COUNT(S)	DESCRIPTION	DEGREE	STATUTE
003	UNLAW PURPOSE-FIREARMS	2	2C:39-4A
018	UNLAW PURPOSE-FIREARMS	2	2C:39-4A
022	WEAP POSS-DESTRUCT DEVICE	3	2C:39-3A

IT IS THEREFORE ON SEPTEMBER 29 1995 ORDERED AND ADJUDGED THAT THE DEFENDANT IS SENTENCED AS FOLLOWS:

COUNT #18: DEFENDANT COMMITTED TO NJSP FOR 12 YEARS; MUST SERVE 4 YEARS WITHOUT PAROLE. DEFENDANT TO RECEIVE CREDIT FOR TIME SERVED. PAY $75.00 SSCP; $100.00 VCCB PENALTY AND $1,980.00 RESTITUTION PAYABLE TO DEPARTMENT OF CORRECTIONS. COUNT #3: DEFENDANT COMMITTED TO NJSP FOR 7 YEARS; MUST SERVE 3 YEARS WITHOUT PAROLE; TO RUN CONCURRENT WITH

COUNT #18. DEFENDANT TO RECEIVE CREDIT FOR TIME SERVED. PAY $75.00 SSCP AND $100.00 VCCB; PAYABLE TO DEPARTMENT OF CORRECTIONS. COUNT #22: DEFENDANT COMMITTED TO NJSP FOR 3 YEARS TO RUN CONCURRENT WITH COUNTS #18 & 22. PAY $75.00 SSCP AND $100.00 VCCB; PAYABLE TO DEPARTMENT OF CORRECTIONS. COUNTS #1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21 & 23 – DISMISSED ON MOTION OF PROSECUTOR.

( ) IT IS ORDERED THAT THE SHERIFF DELIVER THE DEFEND. TO THE APPROPRIATE CORRECTIONAL AUTHORITY.

(X) DEFENDANT RECEIVES CREDIT FOR TIME SPENT IN CUSTODY

TOT. DAYS 282 DATES 12/22/94 TO 9/29/95

( ) DEFENDANT RECEIVES GAP TIME CREDIT FOR TIME SPENT IN CUSTODY

TOT. DAYS _____ DATES

TOT. CUSTODIAL TERM 12Y 00M 000 INSTITUTION:

CARE COMMISS/CORR TOT. PROBATION: 00Y 00M

STATE OF NEW JERSEY V. CHARLES APPRENDI

SBI# 887 335B IND/ACC# 01-00046-I

TOTAL FINE $.00

TOTAL RESTITUTION $1,980.00

THE OFFENSE OCCURRED ON/AFTER 2/23/91 AN ASSESSMENT OF $50 IS IMPOSED ON EACH CONVICTED COUNT UNLESS THE BOX BELOW INDICATES HIGHER ASSESSMENT ($30 IF OFFENSE OCCURRED ON/AFTER 1/9/86 UNLESS HIGHER

ASSESSMENT NOTED) ($25 IF OFFENSE BEFORE 1/1/86)

(X) ASSESSMENT IMPOSED ON COUNT(S) 3 IS $100.00 EACH.

TOTAL VCCB ASSESS $300.00

( ) INSTALLMENT PAYMENTS ARE OF $ _____ PER _____

BEGINNING _____

1) A MANDATORY DEDR PENALTY IS IMPOSED

0 1ST DEGREE @ $3000
0 2ND DEGREE @ $2000
0 3RD DEGREE @ $1000
0 4TH DEGREE @ $750
DISORDERLY PERSONS @ $500

TOTAL DEDR PENALTY $.00

( ) COURT ORDERS THAT THAT COLLECTION OF DEDR PENALTY BE SUSPENDED UPON DEFENDANT'S ENTRY INTO A RESIDENTIAL DRUG PROGRAM FOR THE TERM OF THE PROGRAM

2) A FORENSIC LABORATORY FEE OF $50 PER OFFENSE ORDERED – OFFENSES @ $50.
TOTAL LAB FEE $.00

3) DRUGS INVOLVED:

4) A MANDATORY DRIVER'S LICENSE SUSPENSION OF ___ MO. IS ORDERED THE SUSPENSION BEGINS ___ END: ___
DRIVERS LICENSE # _____

DEFENDANT ADDRESS: _____

EYE COLOR _____ SEX _____

DATE OF BIRTH _____

( ) DEFENDANT HOLDS AN OUT-OF-STATE DRIVERS LICENSE FROM JURISDICTION _____
DRIVERS LICENSE # _____

( ) YOUR NON-RESIDENT DRIVING PRIVILEGE IS REVOKED FOR _____ MONTHS

IF OFFENSE OCCURRED ON/AFTER 02/01/93 & SENTENCE IS PROBATION OR STATE CORRECTIONS, A TRANSACTION FEE UP TO $1.00 IS ORDERED EACH OCCASION A PAYMENT OR INSTALLMENT IS MADE.

IF OFFENSE OCCURRED ON/AFTER 08/02/93 A $75 SAFE NEIGHBORHOOD SERVICES FUND ASSESSMENT IS ORDERED ON EACH CONVICTION

IF OFFENSE OCCURRED ON/AFTER 01/05/94 & SENTENCE IS PROBATION A FEE OF UP TO $25 PER MO. FOR THE PROB. TERM IS ORDERED COUNT PER MONTH _____

NAME OF FORM PREPARER

TELEPHONE #
609 451 8000

NAME (ATTORNEY)
JOSEPH D O'NEILL ESQ.

REPORTER: TAPED

REASONS

I have reviewed the presentence report and I have considered the Aggravating and Mitigating Factors under the statute, and I find that the following apply:

Aggravating Factors: 2 & 9 Mitigating Factors: 6, 7, 8

THIS WAS A NEGOTIATED PLEA AGREEMENT BETWEEN THE PROSECUTOR AND THE DEFENDANT. IN DECIDING WHETHER OR NOT TO ACCEPT THE PLEA AGREEMENT, THE COURT CONSIDERED THE NATURE AND DEGREE OF THE CRIME, THE NEED

FOR PUNISHMENT AND DETERRENCE, THE DEFENDANT'S PROSPECTS FOR REHABILITATION, THE PRESENTENCE REPORT, THE DEFENDANT'S PREVIOUS INVOLVEMENT IN THE CRIMINAL JUSTICE SYSTEM, THE RECOMMENDATIONS OF THE PROSECUTOR AND THE PROBATION DEPARTMENT, THE TERMS OF THE PLEA AGREEMENT AND THE INTEREST OF THE PUBLIC. THE PLEA AGREEMENT APPEARS TO BE FAIR, AND IN THE INTEREST OF JUSTICE AND THE COURT SENTENCES THE DEFENDANT AS IS SET FORTH IN THIS JUDGMENT.

RUSHTON H. RIDGWAY, J.S.C.
JUDGE (NAME)

SEPTEMBER 29, 1995
DATE

/s/ Rushton H. Ridgway
JUDGE (SIGNATURE)

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 1062

STATE OF NEW JERSEY

DATED: APRIL 26, 1990

The Senate Judiciary Committee reports favorably Senate Bill No. 1062.

This bill provides that upon application of the prosecutor, a sentencing court may impose an extended term of imprisonment on a person convicted of a crime if it can be shown by a preponderance of the evidence that the crime was committed, at least in part, with ill will, hatred or bias, and with a purpose to intimidate, an individual or group of individuals because of race, religion, sexual orientation or ethnicity.

The extended terms of imprisonment could not be imposed on a person convicted under 2C:12-1a (simple assault); 2C:33-4 (harassment); 2C:33-10 (placing signs or displays implying threats of violence) or 2C:33-11 (desecrating religious or sectarian premises). If, however, it was determined that a conviction for simple assault or harassment involved ethnic intimidation, the offense would be upgraded from a disorderly persons offense to a crime of the fourth degree.

The extended term of imprisonment for a crime of the first degree is between 20 years and life imprisonment; for a crime of the second degree between 10 and 20 years; for a crime of the third degree between 5 and 10 years imprisonment and for crimes of the fourth degree up to 5 years.

This bill was prefiled for introduction in the 1990 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

ASSEMBLY JUDICIARY, LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

SENATE, No. 1062

STATE OF NEW JERSEY

DATED: JUNE 7, 1990

The Assembly Judiciary, Law and Public Safety Committee reports favorably Senate Bill No. 1962.

This bill provides that upon application of the prosecutor, a sentencing court may impose an extended term of imprisonment on a person convicted of a crime if it can be shown by a preponderance of the evidence that the crime was committed, at least in part, with ill will, hatred or bias, and with a purpose to intimidate, an individual or group of individuals because of race, religion, sexual orientation or ethnicity.

The extended terms of imprisonment could not be imposed on a person convicted under 2C:12-1a (simple assault); 2C:33-4 (harassment); 2C:33-10 (placing signs or displays implying threats of violence) or 2C:33-11 (desecrating religious or sectarian premises). If, however, it was determined that a conviction for simple assault or

harassment involved ethnic intimidation, the offense would be upgraded from a disorderly persons offense to a crime of the fourth degree.

The extended term of imprisonment for a crime of the first degree is between 20 years and life imprisonment; for a crime of the second degree between 10 and 20 years; for a crime of the third degree between 5 and 10 years imprisonment and for crimes of the fourth degree up to 5 years.

This bill is identical to the Assembly Committee Substitute for Assembly Bills Nos. 3022, 2758, 2759 and 2101.

P.L. 1990, Chapter 87, *approved August 9, 1990*
1990 Senate No. 1062

AN ACT concerning ethnic intimidation and amending N.J.S. 2C:12-1, N.J.S.2C:33-4, N.J.S.2C:43-7, and N.J.S. 2C:44-3.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*:

1. N.J.S.2C:12-1 is amended to read as follows:

2C:12-1. Assault. a. Simple assault. A person is guilty of assault if he:

(1) Attempts to cause or purposely, knowingly or recklessly causes bodily injury to another; or

(2) Negligently causes bodily injury to another with a deadly weapon; or

(3) Attempts by physical menace to put another in fear of imminent serious bodily injury.

Simple assault is a disorderly persons offense unless committed in a fight or scuffle entered into by mutual consent, in which case it is a petty disorderly persons offense.

b. Aggravated assault. A person is guilty of aggravated assault if he:

(1) Attempts to cause serious bodily injury to another, or causes such injury purposely or knowingly or

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EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined <u>thus</u> is new matter.

under circumstances manifesting extreme indifference to the value of human life recklessly causes such injury; or

(2) Attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon; or

(3) Recklessly causes bodily injury to another with a deadly weapon; or

(4) Knowing under circumstances manifesting extreme indifference to the value of human life points a firearm, as defined in section 2C:39-1f., at or in the direction of another, whether or not the actor believes it to be loaded; or

(5) Commits a simple assault as defined in subsection a. (1) and (2) of this section upon

(a) Any law enforcement officer acting in the performance of his duties while in uniform or exhibiting evidence of his authority; or

(b) Any paid or volunteer fireman acting in the performance of his duties while in uniform or otherwise clearly identifiable as being engaged in the performance of the duties of a fireman; or

(c) Any person engaged in emergency first-aid or medical services acting in the performance of his duties while in uniform or otherwise clearly identifiable as being engaged in the performance of emergency first-aid or medical services; or

(d) Any school board member or school administrator, teacher or other employee of a school board while clearly identifiable as being engaged in the performance

of his duties or because of his status as a member or employee of a school board.

Aggravated assault under subsection b. (1) is a crime of the second degree; under subsection b. (2) is a crime of the third degree; under subsection b. (3) and b. (4) is a crime of the fourth degree; and under subsection b. (5) is a crime of the third degree if the victim suffers bodily injury, otherwise it is a crime of the fourth degree.

c. A person is guilty of assault by auto when the person drives a vehicle recklessly and causes either serious bodily injury or bodily injury to another. Assault by auto is a crime of the fourth degree if serious bodily injury results and is a disorderly persons offense if bodily injury results.

d. A person who is employed by a facility as defined in section 2 of P.L. 1977, c.239 (C.52:27G-2) who commits a simple assault as defined in paragraph (1) or (2) of subsection a. of this section upon an institutionalized elderly person as defined in section 2 of P.L. 1977, c.239 (C.52:27G-2) is guilty of a crime of the fourth degree.

e. A person who commits a simple assault as defined in subsection a. of this section is guilty of a crime of the fourth degree if the person acted, at least in part, with ill will, hatred or bias toward, and with a purpose to intimidate, an individual or group of individuals because of race, color, religion, sexual orientation, or ethnicity.

(cf: P.L. 1985, c.444, s.1)

2. N.J.S. 2C:33-4 is amended to read as follows:

2C:33-4. Harassment.

[A] Except as provided in subsection d., a person commits a petty disorderly persons offense if, with purpose to harass another, he:

a. Makes, or causes to be made, a communication or communications anonymously or at extremely inconvenient hours, or in offensively coarse language, or any other manner likely to cause annoyance or alarm;

b. Subjects another to striking, kicking, shoving, or other offensive touching, or threatens to do so; or

c. Engages in any other course of alarming conduct or of repeatedly committed acts with purpose to alarm or seriously annoy such other person.

A communication under subsection a. may be deemed to have been made either at the place where it originated or at the place where it was received.

d. A person commits a crime of the fourth degree if in committing an offense under this section, he acted, at least in part, with ill will, hatred or bias toward, and with a purpose to intimidate, an individual or group of individuals because of race, color, religion, sexual orientation or ethnicity.

(cf: P.L. 1983, c.334, s.1)

3. N.J.S.2C:43-7 is amended to read as follows:

2C:43-7. Sentence of imprisonment for Crime; Extended Terms. a. In the cases designated in section 2C:44-3, a person who has been convicted of a crime may

be sentenced to an extended term of imprisonment, as follows:

(1) in case of aggravated manslaughter sentenced under subsection c. of N.J.S.2C:11-4 or kidnapping when sentenced as a crime of the first degree under paragraph (1) of subsection c. of 2C:13-1 for a specific term of years which shall be between 30 years and life imprisonment;

(2) Except for the crime of murder and except as provided in paragraph (1) of this subsection, in the case of a crime of the first degree, for a specific term of years which shall be fixed by the court and shall be between 20 years and life imprisonment;

(3) In the case of a crime of the second degree, for a term which shall be fixed by the court between 10 and 20 years;

(4) In the case of a crime of the third degree, for a term which shall be fixed by the court between five and 10 years;

(5) In the case of a crime of the fourth degree pursuant to 2C:43-8c. [and], 2C:44 3d. and 2C:44-3e. for a term of five years, and in the case of a crime of the fourth degree pursuant to 2C:43-6f. for a term which shall be fixed by the court between three and five years.

b. As part of a sentence for an extended term and notwithstanding the provisions of 2C:43-9, the court may fix a minimum term not to exceed one-half of the term set pursuant to subsection a. during which the defendant shall not be eligible for parole or a term of 25 years during which time the defendant shall not be eligible for

parole where the sentence imposed was life imprisonment; provided that no defendant shall be eligible for parole at a date earlier than otherwise provided by the law governing parole.

c. In the case of a person sentenced to an extended term pursuant to 2C:43-6c., 2C:43-6f. and 2C:44-3d., the court shall impose a sentence within the ranges permitted by 2C:43-7a. (2), (3), (4) or (5) according to the degree or nature of the crime for which the defendant is being sentenced, which sentence shall include a minimum term which shall, except as may be specifically provided by N.J.S.2C:43-6f., be fixed at or between one-third and one-half of the sentence imposed by the court or five years, whichever is greater, during which the defendant shall not be eligible for parole. Where the sentence imposed is life imprisonment, the court shall impose a minimum term of 25 years during which the defendant shall not be eligible for parole, except that where the term of life imprisonment is imposed on a person convicted for a violation of N.J.S.2C:35-3, the term of parole ineligibility shall be 30 years.

(cf: P.L. 1988, c.44, s.14.)

4. N.J.S.2C:44-3 is amended to read as follows:

2C:44-3. Criteria for Sentence of Extended Term of Imprisonment.

The court may, upon application of the prosecuting attorney, sentence a person who has been convicted of a crime of the first, second or third degree to an extended term of imprisonment if it finds one or more of the grounds specified in this section. The court shall, upon

application of the prosecuting attorney, sentence a person who has been convicted of a crime, other than a violation of N.J.S.2C:12-1a., N.J.S.2C:33-4 or a violation of section 1 or 2 of P.L. 1981, c.282 (C.2C:33-10 or 2C:33-11), to an extended term if it finds, by a preponderance of the evidence, the grounds in subsection e. If the grounds specified in subsection d. are found, and the person is being sentenced for commission of any of the offenses enumerated in 2C:43-6c., the court shall sentence the defendant to an extended term as required by 2C:43-6c., and application by the prosecutor shall not be required. The finding of the court shall be incorporated in the record.

a. The defendant is a persistent offender. A persistent offender is a person who at the time of the commission of the crime is 21 years of age or over, who has been previously convicted on at least two separate occasions of two crimes committed at different times, when he was at least 18 years of age, if the latest in time of these crimes or the date of the defendant's last release from confinement, whichever is later, is within 10 years of the date of the crime for which the defendant is being sentenced.

b. The defendant is a professional criminal. A professional criminal is a person who committed a crime as part of a continuing criminal activity in concert with two or more persons, and the circumstances of the crime show he has knowingly devoted himself to criminal activity as a major source of livelihood.

c. The defendant committed the crime as consideration for the receipt, or in expectation of the receipt, of anything of pecuniary value the amount of which was

unrelated to the proceeds of the crime or he procured the commission of the offense by payment or promise of payment of anything of pecuniary value.

d. Second offender with a firearm. The defendant is at least 18 years of age and has been previously convicted of any of the following crimes: 2C:11-3, 2C:11-4, 2C:12-1b., 2C:13-1, 1, 2C:18-2, 2C:29-5, 2C:39-4a., or has been previously convicted of an offense under Title 2A of the 2C:14-2a., 2C:14-3a., 2C:15-New Jersey Statutes which is equivalent of the offenses enumerated in this subsection and he used or possessed a firearm, as defined in 2C:39-1f., in the course of committing or attempting to commit any of these crimes, including the immediate flight therefrom.

e. The defendant in committing the crime acted, at least in part, with ill will, hatred or bias toward, and with a purpose to intimidate, an individual or group of individuals because of race, color, religion, sexual orientation or ethnicity.

(cf: P.L. 1981, c.31, s.3)

5. This act shall take effect immediately.

CRIMINAL JUSTICE

Provides for extended terms of imprisonment for offenses involving ethnic intimidation and upgrades simple assault and harassment involving ethnic intimidation.